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June 7, 2018

**Via Electronic and U.S. Mail**

Ms. Shonda D. Green  
Department Secretary  
Massachusetts Department of Telecommunications and Cable  
1000 Washington Street, Suite 820  
Boston, MA 02118-6500

RE: Docket No. 18-2, Petition of the State 911 Department for Approval of Fiscal Year 2018 Expenditures, Adjustment of the Enhanced 911 Surcharge, Approval of Fiscal Year 2019 Development Grant Amount, and Approval of Fiscal Year 2019 Incentive Grant Regional PSAP Three to Nine Communities Amount

Dear Ms. Green:

I am writing on behalf of the New England Cable and Telecommunications Association, Inc. ("NECTA")<sup>1</sup>, to provide the Massachusetts Department of Telecommunications and Cable (the "Department") with NECTA's post-hearing Comments in connection with the above-captioned proceeding.

The Department initiated this inquiry to consider the April 10, 2018, petition by the State 911 Department (the "911 Department") to increase the 911 surcharge by 50% to \$1.50 per line per month from the \$1.00 per line per month, effective July 1, 2018. The 911 Department's immediate request for a 50% funding increase comes a mere three years after its last request for an increase, and would represent a fund increase of over 60% since 2015, to \$171,224,995 from \$106,687,952 to.<sup>2</sup> Under Massachusetts law, NECTA members collect the surcharges from their

<sup>1</sup> NECTA is a nonprofit organization and trade association that represents the interests of most cable television and cable-based telecommunications providers in New England in both legislative and regulatory proceedings. NECTA members provide telecommunications services in Massachusetts.

<sup>2</sup> 911 Department Petition at 2, 6. In 2015, the Department had approved an increase in the monthly 911 surcharge from \$0.75 to \$1.25 for only one year (FY 2015) and a decrease to \$1.00 after that (FYs 2016 and 2017) noting that Next Gen 911 costs would decrease significantly after the Next Gen 911 system was deployed and that the reduction in the surcharge would be beneficial to communications customers. Final Order, *Petition of the State 911 Department to Adjust the Enhanced 911 Surcharge*, June 18, 2015. In DTC 11-2, the Department noted its role in determining necessary 911 services but also protecting the interests of the payers of these services—telecommunications customers. (4-5). Order, *Petition of the State 911 Department for Approval of Fiscal Year 2012 Incentive Grant Regional Emergency Communications Center Category Amount; State 911 Department Emergency Medical Dispatch Grant; and Fiscal Year 2011 Expenditures*, May 27, 2011 (at 4-5).

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customers and remit those charges to the State to cover expenses associated with providing and maintaining the Commonwealth's 911 system. See Mass.Gen.Laws Chapter 6A § 18H. These 911 surcharges, including any increases to them, ultimately are paid by end user customers of phone service in Massachusetts.

The Massachusetts E911 surcharge is already one of the highest in the nation.<sup>3</sup> Legal issues raised herein aside, the Department should very carefully consider whether any increase would be in the interest of the citizens of the Commonwealth, particularly one of the size under consideration.

NECTA agrees that all of the Commonwealth's citizens benefit from a robust 911 system, including Next Generation 911, and does not dispute the testimony of Mr. Pozniak of the 911 Department and Undersecretary Wood regarding the need to update certain aspects of the existing system. Nonetheless, the Department's authority to approve expenses associated with the 911 surcharge is explicitly defined and limited by statute. Mass. Gen. Laws Chapter 6A, §18B(f) provides that:

The [911] Department shall disburse from the Enhanced 911 Fund for prudently incurred expenses associated with ... the recurring and nonrecurring costs of communications services providers in providing enhanced 911 service in the commonwealth to the extent required by federal or Massachusetts law or regulation or federal or Massachusetts agency decision or order....<sup>4</sup>

Accordingly, both state and federal law require that expenses sought to be recovered via the surcharge must be prudently incurred. NECTA respectfully submits that the requested increase sought by the 911 Department fails to meet this requirement.

A significant portion of the 911 Department's request relates to funding of the "Commonwealth of Massachusetts Interoperable Radio System ("CoMIRS"). CoMIRS is a comprehensive statewide effort to upgrade the existing analog radio system, including upgrades to the existing backhaul network and associated radio components. As part of that initiative, the 911 Department proposes replacing over 15,000 radios that will not be capable of communicating on the upgraded digital network, at a cost of over \$75 million.<sup>5</sup> The 911

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<sup>3</sup> See National Emergency Number Association, 9-1-1 Surcharge – User Fees by State, <https://www.nena.org/?page=911RateByState>.

<sup>4</sup> G.L. c. 6A, §18B(f).

<sup>5</sup> See, Response to DTC 1-7a(1), CoMIRS Executive Summary at 10.



Department further projects inclusion of \$25 million annually for future CoMIRS upgrades, for Fiscal Years 2019 through 2023.

Mass. Gen. Laws Chapter 6A, §18B(a) sets forth the scope of the E911 system, and states in relevant part that it includes:

...communications network, database and equipment features provided **for subscribers or end users of communications services enabling such subscribers or end users to reach a PSAP [“Public Safety Answering Point”]** by dialing the digits 911... that directs calls to the appropriate PSAPs based on selective routing and provides the capability for automatic number identification and automatic location identification.<sup>6</sup>

CoMIRS, however, does not provide connections between customers of communications providers and the 911 system. Rather CoMIRS provides network and communications hardware for communications between the PSAPS and emergency responders, not between customers and the PSAP. In other words, CoMIRS involves communications made *after* a customer call has placed to the PSAP. While NECTA does not question the public safety benefits of the CoMIRS system it simply is not today nor would any technological change make it part of the 911 system as defined under Massachusetts law. Because Massachusetts law clearly defines the 911 system as the customer-to-PSAP connection, expenses associated with systems between the PSAP and any others, such as CoMIRS should be excluded from the pro forma budget.

No less importantly, the proposal to include CoMIRS-related expenses in the 911 surcharge is also prohibited by federal law. In 2008, Congress enacted the New and Emerging Technologies 911 Improvement Act of 2008 (the “NET 911 Act”),<sup>7</sup> to ensure that 911 surcharge funds were only spent for 911 purposes. The federal statute provides that states may collect fees or charges applicable to commercial mobile services or IP-enabled voice services “for the support or implementation of 911 or enhanced 911 services, *provided that the fee or charge is obligated or expended only in support of 911 and enhanced 911 services, or enhancements of such services.*”<sup>8</sup> The NET 911 Act requires that the Federal Communications Commission

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<sup>6</sup> G.L. c. 6A, §18B(a) (Emphasis added).

<sup>7</sup> Pub. L. No. 110-283.

<sup>8</sup> 47 U.S.C. § 615a-1(f)(1).

("FCC") submit a report each year detailing the status of the collection and expenditure of fees or charges established by states with 911 services.<sup>9</sup>

The FCC has previously stated that funds used to support public safety radio systems, such as those sought to be included in the budget for CoMIRS, are not 911-related.<sup>10</sup> The FCC's 2016 Report noted that it has generally determined that "funds used to support public safety radio systems, including maintenance, upgrades, and new system acquisitions, are not 911-related within the meaning of the NET 911 Act and therefore constitute a diversion of 911 funds."<sup>11</sup>

The use of the 911 Surcharge to fund the CoMIRS system may serve to make Massachusetts ineligible for Federal 911 grants. 47 U.S.C. § 942 authorizes grants to eligible entities for the implementation of 911 services through the end of the fiscal year 2022.<sup>12</sup> Those grants require the entity to annually certify that "no portion of any designated 911 charges imposed by a State . . . are being obligated or expended for any purpose other than the purposes for which such charges are designated or presented . . ."<sup>13</sup> The statute also requires that the entity forfeit all of the grant funds if they are not used for the implementation or operation of 911 services, E911 services, or Next Generation 911 services.<sup>14</sup> If a portion of the 911 surcharge revenues were used to develop and maintain CoMIRS, the Commonwealth would not be able to certify that a portion of the 911 surcharge revenues is not being used for non-911 related uses, and may be required to return any grant funds awarded ("GDIT").

Finally, NECTA shares the concerns set forth in CTIA's May 23, 2018 Comments regarding the limited details provided by the 911 Department related to pro forma Next Generation 911 recurring and nonrecurring expenses, which comprise a substantial portion of the budget.<sup>15</sup> This includes the limited information related to the 2014 contract with General Dynamics Information Technology. The 911 Department's Petition reflects a long history of surpluses for the 911 Fund carried forward from year-to-year. With this in mind, the Department should be particularly reluctant to require the Commonwealth's telecommunications customers

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<sup>9</sup> See, *Seventh Annual Report To Congress On State Collection And Distribution Of 911 And Enhanced 911 Fees And Charges for the period January 1, 2014 to December 31, 2014*, pp. 63-63  
[https://apps.fcc.gov/edocs\\_public/attachmatch/DOC-337223A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DOC-337223A1.pdf).

<sup>10</sup> See, *Ninth Annual Report To Congress On State Collection And Distribution Of 911 And Enhanced 911 Fees And Charges For The Period January 1, 2016 To December 31, 2016*  
<https://www.fcc.gov/files/9thannual911feereportpdf>

<sup>11</sup> *Id.* at fn. 26.

<sup>12</sup> See 47 U.S.C. § 942(d)(2).

<sup>13</sup> 47 U.S.C. § 942(c)(2).

<sup>14</sup> See 47 U.S.C. § 942(c)(3).

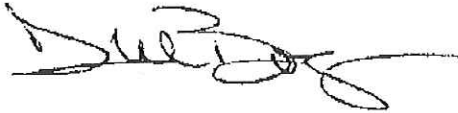
<sup>15</sup> See, CTIA May 23, 2018 Comments at 6.

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shoulder the burden of a 50% increase in the surcharge at any time, let alone one that is the substantial product of a new contract for which limited information has been provided. Indeed, NECTA's members have already expended significant amounts to upgrade their networks in preparation for Next Generation 911, which was fully deployed in 2018, and are entitled to seek recovery from the 911 Fund. However, to date, those members have not sought reimbursement. The 911 Department, which is currently engaged in negotiations to renew the GDIT NG 911 contract, should ensure that given the instant budget request for NG 911 expenses, the Commonwealth's telecommunications providers are not be required to bear additional expenses and resources as a result of the contract.

Thank you for your consideration. Please feel free to contact me should you have any questions related to the submission.

Very truly yours,

A handwritten signature in black ink, appearing to read "David W. Bogan", with a long horizontal flourish extending to the right.

David W. Bogan

cc: Service List